A v Mahkamah Rayuan Syariah Wilayah Persekutuan & Ors

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–133–03 OF 2022
AHMAD KAMAL J
29 JUNE 2022

Administrative Law — Judicial review — Leave — Application for — Renunciation from Islam — Syariah High Court and Syariah Appeal Court dismissed applicant's application to renounce Islam — Sought leave of civil court to review orders of Syariah Courts — Whether civil court has jurisdiction to hear cases involving Syariah matters — Whether civil court could review decision of Syariah Courts — Federal Constitution art 121(1A) — Rules of Court 2012 O 53 r 3

This was applicant's application for leave granted under O 53 r 3 of the Rules of Court 2012 for judicial review. The applicant was born Muslim by operation of law at the time of her birth due to her parents being Muslims. Her father was a convert (*muallaf*) who did so to marry the applicant's mother. After the applicant's parents were divorced, she was raised by her Muslim mother who had never forced Islam onto the applicant. At all the material times, the applicant had never practiced Islam. Consequently, the applicant had chosen Confucianism and Buddhism as her new religion. The applicant therefore sought declarations from the Syariah High Court ('second respondent'), inter alia, that the applicant was never a Muslim and/or was no longer a Muslim and/or was an apostate (*murtad*). Subsequently, after a full trial, the second respondent dismissed the applicant's claims and instructed the applicant to undergo istitabah under Majlis Agama Islam Wilayah Persekutuan ('MAIWP') or the Mufti's Office. The second respondent further ordered the applicant to undergo continuous Islamic classes, as well as *akidah* counselling. Aggrieved, the applicant filed a notice of appeal to the first respondent, the Syariah Appeal Court, against the second respondent's decision. The first respondent was satisfied that the second respondent's judgment had no appealable error, and therefore dismissed the applicant's appeal. The applicant therefore sought leave from this court to review the decision of the first and second respondents. The issues that arose for determination were: (a) whether the civil court has jurisdiction to hear cases involved Syariah matters; and (b) whether the civil court could review the decision of the Syariah Courts.

Held, dismissing applicant's application:

(1) Article 121(1A) of the Federal Constitution ('the FC') has clearly provides that the civil courts shall has no jurisdiction in respect of any

matter within the jurisdiction of Syariah Court, which include apostasy would fall under the jurisdiction of the Syariah Court by virtue of art 121(1A) of the FC. Since, the applicant, being a Muslim, sought to renounce her faith from the religion of Islam to Buddhism, it was only the Syariah Court that could give her the order to her application to renounce Islam as only the Syariah Courts has jurisdiction over cases involving renunciation of Islam. By virtue of art 121(1A) of the FC, civil courts have no jurisdiction to determine and to decide on the applicant's application to renounce Islam as it fell within the jurisdiction of the Syariah Courts (see paras 27, 29 & 59–61)

(2) Article 121(1A) was introduced to separate the jurisdiction between the civil and the Syariah Courts. The civil courts have no jurisdiction in Syariah matters. As such, the civil courts would have no jurisdiction to determine and decide on the applicant's application to renounce Islam. In the present case, although the Syariah Courts had decided to dismiss the applicant's application, the civil courts had no power to review the Syariah Courts' decision (see paras 69–72).

(3) The judicial review sought in this case was to review the Syariah Courts' decisions earlier that dismissed the applicant's application to renounce Islam. The Syariah Courts had done nothing wrong in deciding the applicant's application. Since it was their jurisdiction to do so. The Syariah Courts have acted within its powers to hear cases within its jurisdiction as provided under art 121(1A) of the FC. Therefore, the Syariah Courts had not acted ultra vires when they made the order, nor the orders were illegal and unlawful. In the circumstances, the applicant had failed to show that the decision made by the Syariah Courts was a result of illegality, unreasonableness or irrationality and procedural impropriety (see paras 78–80 & 88).

(4) The civil courts could not and had no jurisdiction to review decisions from the Syariah Courts. Even though the power for judicial review lies within the civil courts, but in this case, the applicant's application was to review the Syariah Court's decision in her application for renunciation. The subject matter of this application was not amenable to judicial review. In addition to that, the applicant had failed to show an arguable case to obtain the order of certiorari and mandamus at the substantive stage. The orders sought by the applicant were frivolous in nature. Thus, the application for leave to commence judicial review proceedings were dismissed (see paras 83, 88–89 & 91).

[Bahasa Malaysia summary

Ini merupakan permohonan pemohon agar izin diberikan di bawah A 53 k 3 Kaedah-Kaedah Mahkamah 2012 untuk semakan kehakiman. Pemohon dilahirkan beragama Islam melalui undang-undang dari masa kelahirannya

atas sebab ibu bapanya merupakan orang Islam. Bapanya merupakan seorang muallaf yang berbuat sedemikian untuk mengahwini ibu pemohon. Selepas ibu bapa pemohon bercerai, dia dibesarkan oleh ibunya yang beragama Islam yang tidak pernah memaksanya mengamalkan ajaran Islam. Pada semua masa material, pemohon tidak pernah mengamalkan ajaran Islam. Selepas dari itu, pemohon telah memilih *Confucianism* dan *Buddhism* sebagai agama barunya. Oleh yang demikian, pemohon memohon pengisytiharan daripada Mahkamah Tinggi Syariah ('responden kedua'), antara yang lain, bahawa dia tidak pernah merupakan seorang beragama Islam dan/atau bukan lagi beragama Islam dan/atau merupakan seorang murtad. Selepas daripada itu, selepas perbicaraan penuh, responden kedua menolak tuntutan pemohon dan memerintahkan pemohon menjalani istitabah di bawah Majlis Agama Islam Wilayah Persekutuan ('MAWIP') atau di pejabat Mufti. Responden kedua turut memerintahkan pemohon untuk melalui kelas Islam berterusan dan juga kaunseling akidah. Terkilan, pemohon memfailkan notis rayuan kepada responden pertama, Mahkamah Rayuan Syariah, terhadap keputusan responden kedua. Responden pertama berpuas hati dengan keputusan responden kedua tidak mempunyai kekhilafan yang boleh dirayu, dan oleh itu mengenepikan rayuan pemohon. Oleh yang demikian, pemohon memohon izin daripada mahkamah ini untuk menyemak keputusan responden pertama dan kedua. Isu yang timbul untuk diputuskan adalah sama ada: (a) mahkamah sivil mempunyai bidang kuasa untuk mendengar kes berkaitan dengan syariah; dan (b) sama ada mahkamah sivil boleh menyemak keputusan Mahkamah Syariah.

Diputuskan, mengenepikan permohonan pemohon:

(1) Perkara 121(1A) Perlembagaan Persekutuan ('PP') telah dengan jelas memperuntukkan bahawa mahkamah sivil tidak akan mempunyai bidang kuasa berkaitan dengan apa-apa hal perkara Mahkamah Syariah, termasuklah murtad yang akan jatuh di bawah bidang kuasa Mahkamah Syariah selaras dengan perkara 121(1A) PP. Memandangkan pemohon, sebagai seorang beragama Islam, memohon untuk menolak kepercayaannya daripada agama Islam kepada Buddhism, hanya Mahkamah Syariah boleh memberikannya perintah untuk menolak agama Islam kerana hanya Mahkamah Syariah mempunyai bidang kuasa terhadap kes melibatkan penolakan agama Islam. Selaras dengan perkara 121(1A) PP, mahkamah sivil tiada bidang kuasa untuk menentukan dan memutuskan permohonan pemohon untuk menolak Islam kerana ianya jatuh di bawah bidang kuasa Mahkamah Syariah (lihat perenggan 27–29 & 59–61)

(2) Perkara 121(1A) diperkenalkan untuk mengasingkan bidang kuasa antara mahkamah sivil dan syariah. Mahkamah sivil tiada bidang kuasa dalam perkara syariah. Oleh yang demikian, mahkamah sivil tiada bidang kuasa untuk menentukan dan memutuskan pemohonan

pemohon untuk menolak agama Islam. Dalam kes ini, walaupun Mahkamah Syariah telah memutuskan untuk mengenepikan permohonan pemohon, mahkamah sivil tiada kuasa untuk menyemak keputusan Mahkamah Syariah (lihat perenggan 69–72).

(3) Semakan kehakiman yang dipohon dalam kes ini adalah untuk menyemak keputusan Mahkamah Syariah terdahulu yang menolak permohonan pemohon untuk menolak ajaran Islam. Mahkamah tidak melakukan apa-apa kekhilafan dalam memutuskan permohonan pemohon. Memandangkan ianya adalah dalam bidang kuasa mereka untuk membuat sedemikian. Mahkamah Syariah telah bertindak dalam bidang kuasanya untuk mendengar kes didalam bidang kuasanya sepertimana diperuntukkan di bawah perkara 121(1A) PP. Oleh yang demikian, Mahkamah Syariah tidak bertindak ultra vires apabila mereka membuat perintah tersebut, dan perintah yang diberikan juga tidaklah tidak sah ataupun salah disisi undang-undang. Dalam keadaan ini, pemohon gagal untuk menunjukan bahawa keputusan yang dibuat oleh Mahkamah Syariah merupakan satu keputusan yang tidak sah di sisi undang-undang, tidak munasabah atau tidak masuk akal dan mempunyai ketidakpatuhan prosedur (lihat perenggan 78–80 & 88).

(4) Mahkamah sivil tidak boleh dan tiada bidang kuasa untuk menyemak keputusan daripada Mahkamah Syariah. Walaupun kuasa semakan kehakiman berada di dalam mahkamah sivil, akan tetapi dalam kes ini, permohonan pemohon untuk menyemak keputusan Mahkamah Syariah dalam permohonannya untuk menolak agama Islam. Hal perkara permohonan ini tidak sesuai untuk semakan kehakiman. Tambahan lagi, pemohon gagal untuk menunjukan kes yang boleh dihujahkan untuk mendapatkan perintah certiorari dan mendamus pada peringkat substantif. Perintah yang dipohon oleh pemohon adalah remeh. Oleh itu, permohonan untuk izin untuk memulakan prosiding semakan kehakiman adalah ditolak (lihat perenggan 83, 88–89 & 91).]

Cases referred to

Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1; [1991] 1 MLRA 301; [1991] 1 CLJ Rep 77, SC (refd)

Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal [2014] 3 MLJ 757; [2014] 3 MLRA 173; [2014] 4 CLJ 253, FC (refd)

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 3 CLJ 145; [2018] 2 MLRA 1, FC (distd)

Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors [2012] 3 MLJ 694; [2010] 3 MLRA 355; [2011] 2 CLJ 165, CA (refd)

Kamariah bte Ali dan lain-lain lwn Kerajaan Negeri Kelantan dan Satu

Lagi [2005] 1 MLJ 197; [2004] 1 MLRA 528; [2004] 3 CLJ 409; [2004] 4 AMR 529, FC (refd)

Ketua Pegawai Penguatkuasa Agama & Ors v Maqsood Ahmad & Ors and another appeal [2021] 1 MLJ 120; [2021] 1 MLRA 286; [2020] 10 CLJ 748, CA (refd)

Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585; [2007] 3 AMR 693; [2007] 3 CLJ 557; [2007] 1 MLRA 359, FC (refd)

Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib [1992] 2 MLJ 793; [1992] 1 MLRA 539; [1993] 1 CLJ 264; [1993] 1 AMR 129, SC (refd)

Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 181; [2021] 2 MLRA 70; [2021] 3 CLJ 301, FC (refd)

SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener) [2022] 2 MLJ 356; [2022] 3 MLRA 219; [2022] 2 AMR 633; [2022] 3 CLJ 339, FC (refd)

Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489; [1999] 1 MLRA 115; [1999] 2 CLJ 5, FC (refd)

Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor [1999] 2 MLJ 241; [1999] 1 MLRA 175; [1999] 2 CLJ 707; [1999] 2 AMR 2337, FC (refd)

Syarifah Nooraffyzza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors [2018] 2 MLJ 354; [2017] 6 MLRA 345; [2017] 2 SSLR 387, CA (refd)

Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 5 MLJ 60; [2005] 2 MLRA 698; [2006] 1 CLJ 927, CA (refd)

WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd [2012] 4 MLJ 296; [2012] 4 MLRA 257; [2012] 4 CLJ 478, FC (refd)

Wan Johairiza bin Wan Ab Rahman v Mahkamah Rayuan Syariah Selangor & Ors [2021] MLJU 2586; [2022] 2 MLRH 569; [2021] 1 LNS 2151, HC (refd)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) ss 2, 2(b), 4(1), 40(2), (3), 46(2)(b)(x)

Administration of the Religion of Islam (State of Selangor) Enactment 2003 s 97(2)

Federal Constitution arts 5, 8, 11, 11(1), 12(3), 121, 121(1), 121(1A), Part IX, Ninth Schedule, List II, item 1

Penal Code s 377D

Rules of Court 2012 O 53, O 53 r 3

Syariah Courts Evidence (Federal Territories) Act 1997 ss 17(1), 86(5)

Undang-Undang Majlis Agama Islam dan Adat Istiadat Melayu Negeri Kelantan 1966

Fahri Azzat (with Ameerul Aizat bin Noor Haslan and Iqbal Harith Liang bin Danial Liang) (Fahri, Azzat & Co) for the applicant.
Mohammad Sallehuddin bin Md Ali (Federal Counsel, Attorney General's Chambers) for the respondents.

Ahmad Kamal J:

INTRODUCTION

[1] The applicant on 4 March 2022 filed an application that leave be granted to the applicant under O 53 r 3 of the Rules of Court 2012 ('the ROC') to apply for judicial review (JR) (encl 1).

[2] The applicant seeks the following reliefs:

(a) leave to apply for JR as well as the JR for the grant of the following reliefs under the first main ground of JR that the first and second respondents have no jurisdiction over Muslim renunciation cases in Malaysia:

(i) a declaration that the first and second respondents do not have the jurisdiction and/or power to declare that a person is no longer a Muslim;

(ii) a declaration that the first and second respondents do not have jurisdiction over Majlis Agama Islam Wilayah Persekutuan (MAIWP);

(iii) a declaration that the first respondent's order in the Syariah Court of Appeal No 14000–043–0027–2020 dated 8 December 2021 is illegal and/or unlawful and thus void;

(iv) a declaration that the second respondent's order in the Syariah High Court Case No 14300–043–0309–2018 dated 27 July 2020 is illegal and/or unlawful and thus void;

(v) a declaration that the applicant, A, is entitled to profess her religion of Confucianism and/or Buddhism;

(vi) a declaration that the applicant is no longer a Muslim;

(vii) a declaration that s 86(5) of the Syariah Courts Evidence (Federal Territories) Act 1997 is inconsistent with art 8 of the Federal Constitution (FC), and is therefore unconstitutional and void;

(viii) a declaration that s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 ('the AIA'), which defines a Muslim as, among others, 'seseorang yang salah seorang atau kedua ibu bapanya, pada masa kelahiran orang itu, ialah orang Islam', is to this extent, violative of art 11 of the FC and void;

(ix) a certiorari order to quash the first respondent's order in the Syariah Court of Appeal No 14000–043–00272020 dated 8 December 2021;

(x) a certiorari order to quash the second respondent's order in the Syariah High Court Case No 14300043–0309–2018 dated 27 July 2020;

(xi) an interim stay against the second respondent's order in the Syariah High Court Case No 14300–043–03092018 dated 27 July 2020 and the first respondent's order in the Syariah Court of Appeal No 14000–0430027–2020 dated 8 December 2021 pending the disposal of this JR application;

(xii) general, aggravated and exemplary damages against the respondents in respect of the illegal pre-trial *akidah* counseling sessions order and post-trial, if any;

(xiii) costs against the respondents; and

(xiv) any other orders and/or reliefs deemed necessary by this honourable court.

(b) leave to apply for the following reliefs, in the alternative, under the second main ground of JR that the first and second respondents' orders are unlawful and illegal:

(i) a declaration that the first and second respondents do not have the jurisdiction and/or power to declare that a person is no longer a Muslim;

(ii) a declaration that the first and second respondents do not have jurisdiction over MAIWP;

(iii) a declaration that the first respondent's order in the Syariah Court of Appeal No 14000–043–0027–2020 dated 8 December 2021 is illegal and/or unlawful and thus void;

(iv) a declaration that the second respondent's order in the Syariah High Court Case No 14300–043–03092018 dated 27 July 2020 is illegal and/or unlawful and thus void;

(v) a declaration that the applicant, A, is entitled to profess her religion of Confucianism and/or Buddhism;

(vi) a declaration that the applicant is no longer a Muslim;

(vii) a declaration that s 86(5) of the Syariah Courts Evidence (Federal Territories) Act 1997 is inconsistent with art 8 of the FC, and is therefore unconstitutional and void;

(viii) a declaration that s 2 of the AIA, which defines a Muslim as, among others, 'seseorang yang salah seorang atau kedua ibu bapanya, pada masa kelahiran orang itu, ialah orang Islam', is to this extent, violative of art 11 of the FC and void;

(ix) a certiorari order to quash the first respondent's order in the Syariah Court of Appeal No 14000–043–00272020 dated 8 December 2021;

(x) a certiorari order to quash the second respondent's order in the Syariah High Court Case No 14300043–0309–2018 dated 27 July 2020;

(xi) a mandamus order directed to the first respondent to compel the said first respondent, upon service of this order on the Chief Registrar of the Syariah Appeal Court, to immediately:

(1) issue the renunciation certificate to the applicant; and/or

(2) issue any required legal documents to effect such renunciation immediately.

(xii) general, aggravated and exemplary damages against the respondents in respect of the illegal pre-trial *akidah* counseling sessions order and post-trial, if any;

(xiii) an interim stay against the second respondent's order in the Syariah High Court Case No 14300–043–03092018 dated 27 July 2020 and the first respondent's order in the Syariah Court of Appeal No 14000–0430027–2020 dated 8 December 2021 pending the disposal of this JR application;

(xiv) costs against the respondents; and

(xv) any other orders and/or reliefs deemed necessary by this honourable court.

PARTIES

[3] The applicant, A, is a Malaysian citizen. She is 32 years old and resides in Bukit Jalil, Kuala Lumpur.

[4] The first and second respondents are the Syariah Courts which were established according to s 40(3) and s 40(2) of the AIA respectively.

[5] The third respondent ('MAIWP') is a statutory body established under s 4(1) and s 40(2) of the AIA to, among others, advise the Yang di-Pertuan Agong in matters relating to the religion of Islam.

[6] The fourth respondent is the Government of Malaysia.

FACTUAL BACKGROUND

[7] On 8 February 1990, the applicant was born Muslim by operation of law at the time of her birth due to her parents being Muslims. Her father was a convert (*muallaf*) who did so to marry the applicant's mother.

[8] After the applicant's parents were divorced, she was raised by her

Muslim mother who had never forced Islam onto the applicant. According to her, she was given free rein to determine her own faith by her mother.

[9] At all the material times, the applicant had never practiced Islam as she claimed that her parents never practiced it too.

[10] Consequently, and prior to the filing of her summons and statement of claim on 21 August 2018, the applicant, had chosen Confucianism and Buddhism as her new religion.

[11] The applicant's summons and statement of claim were filed against MAIWP for the following reliefs:

(a) a declaration that the applicant was never a Muslim;

(b) alternatively, a declaration that the applicant is no longer a Muslim;

(c) in the further alternative, a declaration that the applicant is an apostate (*murtad*);

(d) a declaration that states the effects of the applicant's conversion out of Islam under Islamic law, which among others include, the forfeiture of the applicant's right to receive the inheritance of the applicant's Muslim relatives, and her disentitlement from any right and/or privileges afforded to Malays under the Federal and State constitutions;

(e) an order that the applicant is not required to attend any counseling sessions relating to the religion of Islam; and

(f) any further reliefs and/or orders deemed necessary by the second respondent.

[12] In respect of the applicant's faith and profession of Islam, the applicant had stated in her statement of claim filed therein that:

(a) the applicant had never recited the *syahadah*;

(b) the applicant does not accept nor believe, that Allah is the only God and Muhammad is a prophet;

(c) the applicant rejects the Al-Quran as God's commandment upon humanity, and the applicant also opines that the Al-Quran is a creation of men;

(d) the applicant rejects the *hadiths* of Muhammad as a universal guide for humanity, and that the same is archaic and out of touch with modern times;

(e) the applicant was registered as a Muslim due to the operation of law, and not due to her personal belief;

(f) the applicant professes Confucianism and Buddhism as her religion, and that she visits Buddhist temples yearly to conduct prayers, and to prepare for reincarnation in her journey towards attaining nirvana;

(g) the applicant regularly attends Buddhist celebrations and customs, and has lived the life of a Buddhist for a long time;

(h) the applicant routinely consumes food and beverages that are haram under Islam, ie pork and alcohol as it is not restricted under Buddhism; and

(i) that the applicant seeks a declaration to renounce Islam to reflect her true faith, and to prevent the image of Islam from being tarnished by her actions because she does not intend to do so by pretending to be a Muslim.

[13] Pending the applicant's trial, the second respondent had, on 10 December 2018, ordered her to attend 12 *akidah* counseling sessions ('pre-trial *akidah* counseling sessions order') for a period of six months (14 January 2019–25 June 2019). After further discussion with the applicant's solicitor, she had agreed to not object to it because it will incur expenses and further time to contest and challenge the same. Without further ado, she had taken leave from her employment in Oman, and flew back to Malaysia to undergo these 12 counseling sessions on these dates:

(a) 14 January 2019 — two sessions;

(b) 15 January 2019 — one session;

(c) 16 January 2019 — one session;

(d) 17 January 2019 — one session;

(e) 18 January 2019 — one session;

(f) 22 January 2019 — two sessions;

(g) 23 January 2019 — two sessions;

(h) 24 January 2019 — one session; and

(i) 25 January 2019 — one session.

[14] On 28 May 2019, the applicant's mother (Habesah @ Makesah bt Ismail) and her close friend, Lee Cho Ling were called to the stand as witnesses to the applicant's faith. There, they had proffered oral evidence of the applicant's profession of the Buddhist faith.

[15] On 27 July 2020, after a full trial, the second respondent dismissed the applicant's claims and instructed the applicant to undergo *istitabah* under

MAIWP or the Mufti's Office. The second respondent further ordered the applicant to undergo continuous Islamic classes, as well as *akidah* counseling ('the second respondent's order'). The purported basis of the second respondent's order and the decision is based on the following reasons ('the second respondent's grounds of judgment (GOJ)'):

(a) the applicant was born to a valid marriage between her mother and father who were both Muslims, and therefore it is without question that the applicant was born into the same religion;

(b) the right to freedom of religion under art 11(1) of the FC does not apply to Muslims;

(c) the Syariah Courts are not permitted to allow a Muslim to convert out of Islam as it is against *hukum syarak*, and the purpose of the Syariah Courts is to dignify the position of Islam in Malaysia and to uphold justice following *hukum syarak* in this country; and

(d) the court opines that *akidah* consultations are a necessary practice to resolve such cases and to restore the applicant's faith in Islam.

[16] On 7 August 2020, the applicant had filed the notice of appeal to the first respondent, the Syariah Appeal Court, against the entirety of the second respondent's decision. For the purpose of this JR application, the complete and relevant documents to be referred to is the record of appeals filed at the first respondent before. The documents are attached in the applicant's affidavit in support.

[17] On 8 December 2021, the first respondent was satisfied that the second respondent's judgment had no appealable error, and therefore dismissed the applicant's appeal ('the first respondent's order'). The grounds are as follows ('the first respondent's GOJ'):

(a) the first respondent agreed with the second respondent that the applicant is a Muslim as defined under s 2 subpara (b) of the AIA, by operation of law, as she was born into a lawful marriage between two Muslims;

(b) the first respondent opines that art 11 of the FC does not confer a Muslim the freedom to convert out of Islam;

(c) the applicant's *iqrar* (under the meaning of s 17(1) of the Syariah Courts Evidence (Federal Territories) Act 1997) that she does not believe in nor practices the religion of Islam is invalid as an *iqrar* can only be made against another individual, and not onto oneself;

(d) the applicant's failure to adhere to Islamic practices does not result in the collapse of her *akidah* nor her conversion out of Islam — this only goes

to the issue of sin and reward (dosa dan pahala);

(e) the applicant's declaratory evidence is insufficient proof of her faith;

(f) the applicant's mother who appeared as a witness to prove her faith, is a *tohmah* (doubtful) witness whose evidence is not binding upon the first respondent; and

(g) as both of the applicant's witnesses are female, the requirement for male witnesses under s 86(5) of the Syariah Courts Evidence (Federal Territories) Act 1997 was not met, and therefore it has no probative value. This effectively discriminates the quality of evidence proffered by female witnesses as opposed to that of male witnesses.

(The second respondent's order and GOJ dated 27 July 2020 and 28 August 2020 respectively, and the first respondent's order and GOJ dated 8 December 2021 and 9 December 2021 respectively, are hereinafter collectively referred to as ('the impugned orders').

[18] The first and second respondents' common grounds in making the impugned orders can be summarised as follows:

(a) the applicant was born to Muslim parents in a lawful marriage, and therefore she is a Muslim as defined under s 2 subpara (b) of the AIA, by operation of law;

(b) the right to freedom of religion does not permit Muslims to convert out of Islam;

(c) the declaratory evidence of the applicant is insufficient to prove her conversion out of Islam; and

(d) *akidah* counseling sessions are necessary and justified to rehabilitate.

GROUNDS OF JUDICIAL REVIEW

[19] Collectively, the applicant is seeking the leave of this court to review the impugned orders, and to grant the reliefs stated in this JR application filed herein.

[20] The main grounds are as follows:

(a) the first and second respondents do not have jurisdiction over any case pertaining to a person's conversion from Islam; and

(b) alternatively, the impugned orders were made in contrary to the principles of administrative law, and are therefore within the jurisdiction of the civil courts.

ISSUES

[21] Having perused the cause papers, I am of the view that the main issues to be determined are:

(a) whether the civil court has jurisdiction to hear cases involving Syariah matters; and

(b) whether the civil court can review the decision of the Syariah Courts;

THE DECISION OF THE COURT

[22] The application before this court is for leave to commence JR proceedings. After the hearing, I dismissed the applicant's application in encl 1. I will now set out the grounds of my judgment.

[23] The Federal Court in *WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd* [2012] 4 MLJ 296; [2012] 4 MLRA 257; [2012] 4 CLJ 478, speaking through Suriyadi Halim Omar FCJ (as he then was) held:

> ... Leave may be granted if the leave application is not thought of as frivolous, and if the leave is granted, an arguable case of granting the reliefs sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though, ie, unless the matter for judicial review is amenable to judicial review no success may be envisaged.

[24] Based on the judgment laid down in *WRP Asia Pacific Sdn Bhd*, the test to be applied are as follows:

(i) whether the subject matter is amenable to JR; and if so

(ii) from the materials available, whether the application is frivolous and if not thought as frivolous, to consider that the applicant has an arguable case to obtain the relief sought at the substantive hearing.

[25] The principles governing applications for leave to commence JR proceedings have also been set out in *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60; [2005] 2 MLRA 698; [2006] 1 CLJ 927 where Gopal Sri Ram JCA (as he then was) held:

> ... the High Court should not go into the merits of the case at leave stage. Its role is only to see if the application for leave is frivolous ... So too will the court be entitled to refuse leave if it a case where the subject matter of the review is one which by settled law (either written law of the common law) is non-justiciable.

[26] Based on the above cases, the applicant will have to satisfy the tests propounded in order to secure the leave to commence the JR proceedings. At this stage, the court need not go into the merits of the case, but only to see if the application for leave is frivolous.

Issue (i): Whether the civil court has jurisdiction to hear cases involving Syariah/Islamic matters

[27] Article 121(1A) of the FC clearly provides that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts. It states as follows:

> 121 Judicial power of the Federation
>
> (1) There shall be two High Courts of co-ordinate jurisdiction and status, namely —
>
> (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and
>
> (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;
>
> (c) (Repealed),
>
> and such inferior courts as may be provided by federal law; and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.
>
> (1A) *The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.* (Emphasis added.)

[28] There have been many cases concerning art 121(1A) of the FC decided by the courts in the last decades. The law remains that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

[29] The following cases would show that matters concerning Islamic matters, which include apostasy would fall under the jurisdiction of the Syariah Court by virtue of art 121(1A) of the FC.

[30] In *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1; [1991] 1 MLRA 301; [1991] 1 CLJ Rep 77, the appellant sought a declaration that her deceased son at the time of his death was not a Muslim and/or had renounced the Islamic faith and for the consequential declaration that she was entitled to the body of the deceased. Mohamed Yusof SCJ (as he then was) in his judgment mentioned as follows:

> The foremost question to be determined is whether the deceased had renounced Islam during his lifetime and the only forum qualified to answer the question is the Syariah Court. It would not be feasible to direct the judicial commissioner to refer the matter to the chairman of the fatwa committee under s 37(1) of the Kedah Administration of Muslim Law Enactment 1962, based on the facts as found by the learned judicial commissioner, for a ruling by the committee under s 37(4). *This is a matter which is within the jurisdiction of the Syariah Court and not the High Court*. Further, s 37(4) has been overtaken and superseded by the constitutional amendment in art 121(1A) of the Federal Constitution. (Emphasis added.)

[31] In *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 793; [1992] 1 MLRA 539; [1993] 1 CLJ 264; [1993] 1 AMR 129, the plaintiff and defendant both are Muslim and the wife had petitioned for divorce at the Syariah Court of Kuala Lumpur. She subsequently filed a suit in the High Court at Kuala Lumpur against her husband claiming for damages and an injunction to restrain the defendant from assaulting, harassing or molesting her and the members of her family. The defendant afterward filed a notice of motion to set aside the temporary injunction. The issue before the court was whether the court has jurisdiction to adjudicate on the plaintiffs action since it involves a matter which falls exclusively within jurisdiction of the Syariah Court.

[32] Harun Hashim SCJ (as he then was) held that:

> The intention of Parliament by art 121(1A) of the Federal Constitution is to take away the jurisdiction of the High Courts in respect of any matter within the jurisdiction of the Syariah Court.
>
> The parties in this case are Muslims and they are husband and wife. The allegations of assault and battery by the plaintiff fall within s 127 of the Islamic Family Act 1984 and the Syariah Court has power to grant an injunction under s 107 of the Act. There cannot be any doubt that the Syariah Court has been conferred with jurisdiction in respect of matters before the High Court in this case.

[33] In *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor* [1999] 2 MLJ 241; [1999] 1 MLRA 175; [1999] 2 CLJ 707; [1999] 2 AMR 2337, the appellant was convicted and sentenced to six months imprisonment by the Kuala Lumpur sessions court, after he pleaded guilty to allowing Dato' Seri Anwar Ibrahim to sodomise him which is an offence under s 377D of the Penal Code. The offence was also an offence under the Syariah Criminal Offences (Federal Territories) Act 1997 and triable by the Syariah Court. The application on behalf of the appellant for habeas corpus was dismissed by the High Court and in consequence he appealed to the Court of Appeal.

[34] The Court of Appeal in deciding, inter alia, that the offence for which the appellant had been convicted and sentenced was within the trial and sentencing jurisdiction of the sessions court, dismissed the appeal. The appellant appealed against that decision to the Federal Court.

[35] In the Federal Court, the appeal centered on art 121(1) and (1A) of the FC of the Federal Constitution. Counsel for the appellant argued that since the offence with which the appellant had been convicted of was also an offence triable by the Syariah Court and the parties involved were Muslims, the appellant ought to have been charged and tried in the Syariah Court. The appeal was dismissed by the Federal Court.

[36] Eusoff Chin CJ (as he then was) in dismissing the appeal has further illustrated the cases that come under the jurisdiction of the Syariah Court. It was held as follows:

> In interpreting cl (1A) of art 121, it is wrong to examine the clause in isolation. The clause should also not be construed literally since a literal interpretation would give rise to consequences which the legislature could not have possibly intended. Clauses (1) and (1A) of art 121 should therefore be construed together and a construction consistent with the smooth working of the system which art 121 purports to regulate should be adopted (see p 247C-G).
>
> Applying this approach and considering s 59 of the Interpretation Act, it follows that where an offender commits an offence triable by either the civil court or a Syariah Court, he may be prosecuted in either of those courts. In such cases the offender is not liable to be punished twice for the same offence (see pp 247I-248A).
>
> ...
>
> Accordingly, in the light of the authorities we have referred to earlier in this judgment, we have come to the conclusion that the expression 'jurisdiction of the Syariah Courts' refers to 'the exclusive jurisdiction' of those courts. In other words, if a person professing the religion of Islam does a proscribed act which is an offence both under the Penal Code and the (Syariah Criminal Offences (Federal Territories) Act 1997), then the courts referred to in art 121(1) will have jurisdiction to try such an offence. It is only in respect of offences under the Act that a Syariah Court may have exclusive jurisdiction. For example, the offence of adultery which is prescribed as an offence under the Act has no equivalent in the Penal Code or other federal criminal statute. So if a person professing the religion of Islam commits adultery, then he or she may be tried only in a Syariah Court.

[37] Further, in *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489; [1999] 1 MLRA 115; [1999] 2 CLJ 5, the appellant in this case was brought up as a Sikh but had converted to Islam without the knowledge and consent of his mother when he was still a minor. He was then upon reaching 21 years of age, went through a baptism ceremony into the Sikh faith, thereby renouncing Islam.

Subsequently, he filed an originating summons seeking a declaration that he was no longer a Muslim. A

[38] The Federal Court also held that in cases of conversion out of Islam, the jurisdiction lies in the Syariah Court. Mohd Dzaiddin FCJ (as he then was) held that: B

> The jurisdiction of the Syariah Courts to deal with conversions out of Islam, although not expressly provided for in some State Enactments, can be read into those enactments by implication derived from the provisions concerning conversion into Islam. *It is inevitable that since matters on conversion to Islam come* under *the jurisdiction of the Syariah Courts, by implication, conversion out of Islam should also fall under the jurisdiction of the same courts. Thus, the appellant's application for a declaration that he was no longer a Muslim came within the jurisdiction of the Syariah Court and not that of the High Court* (see pp 502A, G and 503B); *Lim Chan Seng v Pengarah Jabatan Agama Islam Pulau Pinang* [1996] 3 CLJ 231 not followed. C D
>
> It cannot be disputed that the Syariah Court derives its jurisdiction under a State law enacted pursuant to art 74(2) of the Constitution following para 1, State List of the Ninth Schedule of the Constitution and in the case of the Federal Territories by virtue of item 6(e) Federal List. Thus, on a matter relating to conversion to Islam, all State Enactments and the Act expressly vest the Syariah Court jurisdiction to deal with the matter. See, for example, ss 139, 140, 141 of the Kedah Enactment; Part IX (ss 85–95) of the Administration of Islamic Law (Federal Territories) Act 1993; and Part VIII (ss 7789) the Penang Administration of Muslim Law Enactment 1993. The sections referred to deal with capacity, requirements of a valid conversion, registration, certificate of conversion and recognition of a convert as a Muslim. It is interesting to note that s 87 of the Federal Territories Act provides that from the moment of his conversion, a convert becomes subject to the same duties and obligation as any other Muslim. E F
>
> One reason we can think of is that the determination of a Muslim convert's conversion out of Islam involves inquiring into the validity of his purported renunciation of Islam under Islamic law in accordance with Hukum Syarak (*Dalip Kaur*). *As in the case of conversion to Islam, certain requirements must be complied with under Hukum Syarak for a conversion out of Islam to be valid, which only the Svariah courts are the experts and appropriate to adjudicate. In short, it does seem inevitable that since matters on conversion to Islam come under the jurisdiction of the Syariah Courts, by implication conversion out of Islam should also fall under the jurisdiction of the same courts.* (Emphasis added.) G H

[39] In *Kamariah bte Ali dan Lain-lain lwn Kerajaan Negeri Kelantan dan Satu Lagi* [2005] 1 MLJ 197; [2004] 1 MLRA 528; [2004] 3 CLJ 409; [2004] 4 AMR 529, the appellants made a statutory declaration declaring that they were no longer embraced the religion of Islam in August 1998. They were sentenced to imprisonment on 5 October 2000 for failure to abide by the order of the Syariah Court of Appeal relating to the offence under Undang-Undang Majlis Agama Islam dan Adat Istiadat Melayu Negeri Kelantan 1966 which I

they had committed before August 1998.

[40] The issue before the court was whether the appellants must be Muslims when they were sentenced in October 2000. Ahmad Fairuz CJ (as he then was) held that:

> The appellants were not automatically excused from the charge in the Syariah Court just because they had made the statutory declaration declaring they were no longer embracing the religion of Islam.
>
> The court at para 6 stated as follows:
>
> > Di Mahkamah Tinggi Kota Bharu, permohonan perayu-perayu untuk pengisytiharan telah ditolak. Mahkamah Tinggi berpendapat bahawa, antara lainnya, perayu-perayu belum disahkan murtad mengikut prosedur yang ditetapkan oleh Enakmen Majlis Agama Islam dan Adat Istiadat Melayu Kelantan 1994 ('Enakmen 1994') dan kerana itu perayu-perayu masih beragama Islam. Justeru itu, perayu-perayu adalah mengikut per 121(1A) Perlembagaan Persekutuan yang berbunyi:
> >
> > > The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.
> >
> > tertakluk kepada bidang kuasa Mahkamah Syariah dan kerana itu Mahkamah Tinggi tidak mempunyai bidang kuasa untuk memutuskan permohonan tersebut.

[41] More importantly, in *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585; [2007] 3 AMR 693; [2007] 3 CLJ 557; [2007] 1 MLRA 359, the Federal Court have also held that the civil court has no jurisdiction in matters pertaining to Syariah matters. The appellant in this case was born and brought up as Muslim. She applied to National Registry Department (NRD) for a change in her name to Lina Joy and to have the word 'Islam' be removed from her Identity Card (IC). Her application was rejected on the ground that it was incomplete without the order of the Syariah Court.

[42] The issue before this court was whether the NRD was entitled in law to impose as a requirement for deleting the entry of Islam in the appellant's IC that she must produce a certificate or a declaration or an order from the Syariah Court that she had apostatised. The Federal Court by majority held that:

> (6) *There was no final decision that the appellant had no longer professed Islam.* Thus, the statement that the appellant could no longer be under the jurisdiction of the Syariah Court because the Syariah Court had only jurisdiction on persons professing Islam should not be emphasised accordingly. *The way a person renounced from a religion should be in accordance of the regulation or law or practice determined or stipulated by the religion itself.* The appellant was not prevented from marrying. The freedom of religion under art 11 of the Federal Constitution required that the

appellant complied with the rituals or law of the Islamic religion specifically regarding renunciation of the religion. *Once the decision of the religion of Islam had been complied and the religious Islamic authority admit her apostasy then only could the appellant profess Christianity* (see para 14).

(7) *The case of Soon Singh clearly showed that the apostasy matter was within the jurisdiction of the Syariah Court.* Item 1, Second List, Ninth Schedule of the Federal Constitution showed that the Islamic law was on of the matters that was in item 1 and when read together with the case of *Dalip Kaur* thus *it was obvious that the apostasy matter was a matter relating to Islamic law and it was clear that it was within the jurisdiction of the Syariah Court and due to art 11 of the Federal Constitution the civil courts could not interfere in this matter* (see para 16).

(8) It was clear that in art 11 there was usage of the words '... right to profess and practice his religion ...' The words 'has the right ...' was applicable to 'profess' and also 'practise': *Kamariah bte Ali lwn Kerajaan Negeri Kelantan, Malaysia* [2002] 3 MLJ 657 *Che Omar bin Che Soh v Public Prosecutor* [1988] 2 MLJ 55 followed. Islam is not *only* a collection of dogma and rituals but it is also a complete way of life comprising of all kinds of human, individual or public, legal, political, economic, social, cultural or judicial activities. And when reading arts 11(1), 74(2) and item 1 in second list of the Ninth Schedule of the Federal Constitution it was obvious that Islam among others included of Islamic law. *Hence, if a Muslim intends to renounce from Islam, he is actually exercising his rights in the syariah law context which has it own jurisprudence relating to apostasy.* The conduct of the NRD officer was only to determine that the appellant was no longer Islam as specified in Islam. Hence, such act could not be said to be contrary to art 11(1) which itself provides the requirement to comply with the conditions of the religion before she had renounce Islam (see para 17.2). (Emphasis added.)

[43] In *Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors* [2012] 3 MLJ 694; [2010] 3 MLRA 355; [2011] 2 CLJ 165 the appellant in this case is a valid wife of the deceased sought a declaration that the deceased was a Hindu, following the custom and Hindu religion before his death. The appellant also contended that as the deceased was not a Muslim on the date of his death, all the documents of conversion of the deceased to the Islamic religion were void. The issue before this court was whether the learned High Court judge had erred in dismissing the appellant's application for a declaration that the deceased was a Hindu and not a Muslim upon the production of the order of the Syariah High Court.

[44] The appellant contended, inter alia, as follows: (a) that by making the orders as he did, the learned judge had abrogated the powers of the civil court to the Syariah Court; (b) that it was not established that the Syariah High Court had jurisdiction in this case because it was not known whether the deceased in this case was a Muslim or not in the first place; and (c) that the first respondent was not a legal person and its appearance before the Syariah High Court was a nullity.

[45] Abdul Wahab Patail JCA (as he then was) held that:

> [9] In our view when giving effect to art 121(1A) the High Court should first decide whether it has jurisdiction ie whether the matter before it is a matter in respect of which jurisdiction has been conferred on the Syariah Court whether by state or federal law.
>
> [10] Once the civil High Court determines and decides that the matter is within the jurisdiction of the Syariah Court, the civil High Court should then decline to adjudicate further on the matter.
>
> [11] This was clearly the approach taken by the learned High Court judge in this case. After setting out the case for the appellant extensively and citing several authorities the learned judge concluded:
>
> > ... 18. Di Wilayah Persekutuan terdapat peruntukan yang nyata dalam Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 (Akta 505) mengenai isu pemelukan agama Islam. Bahagian IX Akta 505 menghuraikan dengan jelas prosedur pemelukan Islam. Oleh itu, sudah tentu mahkamah yang mempunyai bidang kuasa dan kompeten untuk menentukan apa-apa perkara yang timbul di dalam Akta 505, seperti kesahan pemelukan seseorang itu ke agama Islam adalah Mahkamah Syariah dan bukan Mahkamah Sivil. Ini adalah selari dengan perkara 121 (1A) Perlembagaan Persekutuan yang memperuntukkan bahawa Mahkamah Sivil tidak mempunyai bidang kuasa berkenaan dengan apa-apa perkara di mana Mahkamah Syariah mempunyai bidang kuasa yang diberikan di bawah undang-undang bertulis.
> >
> > Saya juga berpendapat bahawa *walaupun pemohon melalui affidavit-afidavit yang difailkan cuba menunjukkan bahawa si mati dalam tempoh yang dikatakan si mati telah memeluk agama Islam, telah mengambil bahagian dalam upacara keagamaan Hindu, dan melakukan perkara yang bertentangan dengan agama Islam atau tidak melakukan perkara seperti yang sepatutnya dilakukan oleh orang Islam, tetapi perkara-perkara tersebut adalah persoalan mengenai undang-undang Islam. Sekali lagi bidang kuasa untuk menentukan perkara-perkara seperti itu adalah Mahkamah Syariah dan bukan Mahkamah Sivil.*
>
> It certainly cannot be said, as the appellant has tried to say, that by going through that process and deciding that he had no jurisdiction in matters relating to the deceased's status as a Muslim, the High Court had abrogated its powers to the Syariah Court. (Emphasis added.)

[46] In *Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757; [2014] 3 MLRA 173; [2014] 4 CLJ 253, the respondent's ('the plaintiff') father had converted to Islam together with his wife and five children, including the plaintiff, who was then one year and three months old in 1983. The statutory declaration was affirmed by her parents and the conversion was registered with Majlis Agama Islam dan Adat Resam Melayu Pahang. A certificate of conversion was subsequently issued to plaintiff's parents but the plaintiff and her siblings' certificates were never issued until 1989.

[47] In 2009, the plaintiff commenced an action against the defendants in the High Court, inter alia, for the declarations and orders that the defendants had wrongfully and unlawfully subjected the plaintiff to undergo a religious conversion process at the age of seven years old; the *Sijil Akuan Masuk Islam* dated 28 December 1989 executed by the plaintiff was ineffective, null and void ab initio; and that the director general of the National Registration Department is ordered and directed to immediately take all the necessary actions to rectify its record about the plaintiff, by reinstating the plaintiff's original Indian name in the plaintiff's identity card and to delete the word 'Islam'.

[48] Her application was struck out at the High Court but was allowed at the Court of Appeal. The Court of Appeal, in allowing plaintiff's appeal, ordered the plaintiff's originating summons be converted to a writ and directed the matter be reverted to the High Court to be tried.

[49] The issues that arose for the court's determination in this appeal were whether the civil or Syariah Court had the jurisdiction to determine whether a person professed Islam or not; and what were the matters that fall within the jurisdiction of the Syariah Court. Arifin Zakaria CJ (as he then was) held that:

> Article 121 of the Federal Constitution ('the Constitution') clearly provided that the civil court shall have no jurisdiction on any matter falling within the jurisdiction of the Shariah Court. The matters that fall within the jurisdiction of the Shariah Court were as provided under art 74 of the Constitution, inter alia, matters falling within the State List in the Ninth Schedule which were Islamic law, personal and family law of person professing the religion of Islam. *Whether a person was a Muslim or not was a matter falling under the exclusive jurisdiction of the Shariah Court. It would be highly inappropriate for the civil court, which lacks jurisdiction pursuant to art 121, to determine the validity of the conversion of any person to the religion of Islam as this is strictly a religious issue. Therefore, the question of the plaintiffs conversion in 1983 fell within the exclusive jurisdiction of the Shariah Court* (see paras 16–18, 27 & 30). (Emphasis added.)

[50] In *Syarifah Nooraffyzza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors* [2018] 2 MLJ 354; [2017] 6 MLRA 345; [2017] 2 SSLR 387 the appellant had left the religion of Islam and embraced Christianity. She afterward went to the National Registration Department (NRD) to apply for a change of her name in her NR1C but NRD informed her that she had to first obtain the letter of release from Islam from the first respondent. The appellant later went to the first respondent's office and met one Ustazah Hanisah who informed her that she had to go to the Syariah Court and attend counseling sessions as an adherence procedure to renounce Islam but the said sessions never materialised.

[51] The appellant afterward applied for leave to move JR against the

respondents for the following reliefs: (a) a declaration that she was a Christian; (b) an order of mandamus to compel the first and/or second respondents to issue the said letter; and (c) an order of mandamus to compel the third respondent to change the appellant's name from Syarifah Nooraffyzza bt Wan Hosen to Vanessa Elizabeth. The learned trial judge dismissed the appellant's application. The issue before this appeal was whether the Sarawak Syariah High Court has jurisdiction to deal with the question of apostasy.

[52] The Court of Appeal speaking through Zawawi Salleh JCA (now FCJ) held that:

> Shariah Courts and civil courts formed two separate legal system. The interpretation that reflected the state of the law today was that the Shariah Court and not the civil court had the exclusive jurisdiction to deal with the issue of conversion out of Islam. In addition, our apex court had consistently and repeatedly held that jurisdiction of the Shariah Court regarding apostasy need not be expressly laid out in the state laws. The court was satisfied that the learned trial judge did not erred in law in holding that the High Court had no jurisdiction to hear apostasy matters (see paras 25, 31, 36–37 & 39).
>
> In our view, the interpretation that reflects the state of the law today is that the Syariah Court and not the civil court has the jurisdiction to deal with the issue of conversion out of Islam. The constitutional and jurisdictional issues as to whether the Syariah Court has jurisdiction to deal with the questions of apostasy was clarified by Mohamad Dzaiddin FCJ (as he then was) in the case of *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 wherein His Lordship said:
>
> > *it does seem inevitable that since matters on conversion to Islam come under the jurisdiction of the Syariah Courts, by implication conversion out of Islam should also fall under the jurisdiction of the same courts.*
>
> The court at para 39 concluded that:
>
> > *For the foregoing reasons, we agree with the conclusion of the learned judge that the appellant's application for leave to move for judicial review against the respondents ought to be dismissed as the matter is within the exclusive jurisdiction of Syariah Court and not the Civil High Court.* (Emphasis added.)

[53] The following recent cases have also shown that the courts made a distinction about the jurisdiction of a person that no longer a Muslim and a person that never been a Muslim, which the former will be governed under the Syariah Court jurisdiction while the later will lie under the jurisdiction of the civil court.

[54] In *Ketua Pegawai Penguatkuasa Agama & Ors v Maqsood Ahmad & Ors and another appeal* [2021] 1 MLJ 120; [2021] 1 MLRA 286; [2020] 10 CLJ 748, these appeals arose from the same decision of the High Court where the Appeal 468 was an appeal by the Selangor state government and religious

authorities (the appellants) against the substantive decision in a JR application in which the High Court granted the applicants (the respondents) the various reliefs they sought against the appellants. Meanwhile, the Appeal 513 was a cross-appeal by the respondents, who despite having been granted the remedies they primarily sought, disagreed with the High Court's decision that it was the Syariah Courts and not the magistrate's courts who had jurisdiction to try offences under s 97(2) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ('the ARIE 2003'). Badariah Sahamid JCA (as she then was) held that:

> The regulation of mosques and other Islamic places of worship collectively constituted matters falling within the precepts of the religion of Islam. It was clear that the Federal Constitution expressly recognised and defined the regulation of 'public places of worship' as the 'precepts of the religion of Islam'. Thus, it was the Syariah Courts (and not the magistrates' courts) which possessed the jurisdiction to hear offences under s 97(2) of the ARIE 2003. There was no merit in the cross-appeal ie appeal 513, because the learned judge had applied all the correct principles of law (see paras 39–41).
>
> (2) Ahmadiyya were not — legally speaking — Muslims. When the two fatwas legally and bindingly declared that Ahmadiyya shall not be considered Muslims, the Syariah Courts were, by that declaration, dispossessed of jurisdiction over such persons. Section 74(1) of the ARIE 2003 was merely a restatement of a trite principle of law that a Syariah Court had no jurisdiction over non-Muslims. Thus, in general terms, the presumption in s 74(2) of the ARIE 2003 had no application to the Ahmadiyya in the state of Selangor because an Ahmadiyya in the state of Selangor was not considered a Muslim. The learned judge was correct in law to find generally that members of the Ahmadiyya community were not subjected to the jurisdiction of the Syariah Courts. The respondents could not be presumed to be Muslims under s 74 ARIE 2003 and be non-Muslims pursuant to the two fatwas, as these two contradictory positions were irreconcilable. Therefore, there was no reason to interfere with the learned judge's decision in respect of the first question ie that *the Syariah Courts had no jurisdiction to try an Ahmadiyya for a s 97(2) of the ARIE 2003 offence if, in the first place, the respondents had always been Ahmadiyya* (see paras 105, 108–110, 113 & 118).
>
> (6) It was hardly possible much less practical to expect the one who alleged to prove what religion the other professed. What one professed was a state of mind especially within that person's knowledge. It was therefore incumbent on the professor or believer ie the respondents to prove their faith. *The right to freedom of religion among Muslims was subjected to item 1 of List II of the Ninth Schedule of the Federal Constitution which granted jurisdiction to the Syariah Courts solely on what one professed.* Thus, to ascertain the Islamic religious identity was necessary. For the foregoing reasons, the burden to establish that the respondents were indeed Ahmadiyya lied on them because their faith was a fact especially within their knowledge (see paras 169–171).

[55] The Federal Court in *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 2 MLRA 70; [2021] 3 CLJ 301 have also

held that in a matter concerning renunciation of Islam, the jurisdiction lies in the Syariah Court. In this case, the High Court found that the appellant's mother and her putative father were married, and that the appellant is a child of the marriage. The High Court also found that the validity of their marriage fell within the jurisdiction of the Syariah Court and consequently, the question of whether the appellant was no longer a Muslim also fell within the Syariah Court's jurisdiction.

[56] The Court of Appeal dismissed the appellant's appeal and held that the appellant is a Muslim and the effect of the declaration sought by the appellant was to enable her to renounce Islam as her religion that in effect amounted to a declaration that the appellant is no longer a Muslim. The Court of Appeal went on to hold that the jurisdiction is thus vested with the Syariah Court and not the civil court. The Court of Appeal held that according to cl (1A) of art 121 of the FC, the appellant's avenue for the declaration sought was within the jurisdiction of the Syariah Court and not the civil court.

[57] The issue in this case is where the subject matter of a cause or matter requires a determination of 'whether a person is or is not a Muslim under the law' rather than 'whether a person is no longer a Muslim', whether the High Court has the exclusive jurisdiction to hear and determine the said subject matter on a proper interpretation of art 121 and item 1 of the State List of the Federal Constitution.

[58] Tengku Maimun CJ held that:

> The civil courts had the jurisdiction to determine the status of persons who claimed they 'were never Muslims' as opposed to 'no longer Muslims'. In the former, the question was whether a person was, in the first place, one who professed the religion of Islam; it was a question regarding one's identity under the Federal Constitution which, in turn, necessitated constitutional interpretation and therefore the civil courts were empowered, indeed duty-bound, to adjudicate the matter even if there were religious connotations attached to it. *But when it concerned a case seeking renunciation from the religion of Islam, the matter was exclusively within the jurisdiction of the Syariah Courts by virtue of art 121(1A) of the Federal Constitution (see paras 99, 106 & 108).* (Emphasis added.)

[59] It is trite that by virtue of art 121(1A) of the FC, civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

[60] Back to the crux issue of this present case, the applicant, being a Muslim, is seeking to renounce her faith from the religion of Islam to Buddhism. Therefore, it is my view that it is the Syariah Court that can give her the order to her application to renounce Islam. She will have to go to the

Syariah Court to get the order as provided by the law. This is also supported by the decision of nothing less than the Federal Court and other cases cited above that Syariah Courts will have jurisdiction over cases involving renunciation of Islam.

[61] Thus, in answering the first issue as stated above as to whether the civil court has jurisdiction to hear cases involving Syariah matters; the answer is in the negative. The civil court in this case has no jurisdiction to determine and to decide on the applicant's application to renounce Islam as it falls within the jurisdiction of the Syariah Courts.

[62] The applicant in this case in her affidavit has also averred that she had applied to the Syariah Court to get the order of her renunciation of Islam to Buddhism and had undergone the requirements of the Syariah Courts by attending the counseling sessions but her application was rejected by both the Syariah High Court and the Syariah Appellate Court on Appeal.

[63] She argued that since the Syariah Court in their grounds of judgment mentioned that the Syariah Courts have no jurisdiction to allow Muslims to renounce Islam, therefore the civil courts ought to exercise jurisdiction in renunciation cases. Thus, she argued that having exhausted all her avenues in the Syariah Courts (which had been dismissed), she now comes to the civil court.

WHETHER THE CIVIL COURTS CAN REVIEW THE DECISION OF THE SYARIAH COURTS

[64] The points argued by the applicant above fall into the second issue as to whether the civil courts can review the decision of the Syariah Courts. Based on the facts of the case, the applicant had exhausted her rights and applied to the Syariah Court to renounce her belief in Islam to Buddhism. Her application had been dismissed by the Syariah High Court and the Syariah Court of Appeal. Therefore, it is her argument that the civil courts ought to have the jurisdiction over her and determine her application since the Syariah Court in its judgment said that they have no jurisdiction to allow Muslims to renounce Islam.

[65] Therefore, having had the Syariah Courts decide on the matter, can the civil courts now review the decision made by the Syariah Court? This issue had been discussed in my recent decision in the case of *Wan Johairiza bin Wan Ab Rahman v Mahkamah Rayuan Syariah Selangor & Ors* [2021] MLJU 2586; [2022] 2 MLRH 569; [2021] 1 LNS 2151 *(which was affirmed by the Court of Appeal on 13 June 2022)* where the applicant sought leave for JR to challenge the decision made by the Selangor Syariah Court of Appeal which dismissed his

application for revision. I have decided that:

> [17] It is to be noted that in the application, the applicant essentially seeks leave for judicial review to challenge the decision by the Selangor Syariah Appeal Court ie the first respondent dated 27 January 2021 which dismissed the application for revision filed by the applicant.
>
> [18] Based on art 121(1A) of the FC it is clear that the civil courts have no jurisdiction in respect of any matter which falls within the jurisdiction of the Syariah Courts.
>
> [20] The above provision of the FC clearly stipulates that the civil court should refrain from interfering with any matter which falls within the jurisdiction of the Syariah Courts.
>
> [24] It is my view that based on art 121(1A) of the FC, the decisions made by the Syariah Courts cannot be reviewed by the civil High Courts. The insertion of art 121(1A) of the FC is to stop the practice of aggrieved parties coming to the civil High Courts to review the decisions made by the Syariah Courts. This is recognized by the Federal Court in the case of *Sukma Darmawan Sasmitaat Madja*.
>
> [27] Based on the above, it is my view that the Selangor Syariah Appeal Court has the jurisdiction to decide on the issue of whether the applicant's application for revision can be made to the Syariah Appeal Court or otherwise, pursuant to the provisions of the relevant statutes.
>
> [28] Therefore, on the above premise, the Selangor Syariah Appeal Court's decision dated 27 January 2021 dismissing the applicant's application for revision is not amenable to review by virtue of art 121(1A) of the FC.

[66] By virtue of art 121(1A) of the FC, the jurisdiction in this matter lies within the Syariah Court. This has been thoroughly discussed above. Having had the decision made by the Syariah Court, is the applicant now entitled to review the decision made case by using the civil court? What power does the civil court have to review the decision of the Syariah Court over this matter?

[67] The applicant's counsel in their submission argues that leave for JR should be granted as this is a JR case against the Syariah Courts and it falls within the realm of the constitutional JR as propounded in the case of *SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener)* [2022] 2 MLJ 356; [2022] 3 MLRA 219; [2022] 2 AMR 633; [2022] 3 CLJ 339.

[68] It was also argued that the denial of power by the Syariah Court which in its grounds of judgment says that the Syariah Courts have no jurisdiction to allow Muslims to renounce Islam is a novel issue that needs further redress by the civil courts in the jurisdictional issues involving Syariah and civil courts.

[69] First and foremost, it is my considered view that the civil court has no jurisdiction over the issue of renunciation. There is no two ways about it. This

position is very clear as provided under art 121(1A) of the FC. The basis of art 121(1A) was introduced to separate the jurisdiction between the Civil and the Syariah Courts. The cases above have clearly shown that the civil courts have no jurisdiction in Syariah matters.

[70] In this current case where the matter involved is on the renunciation of Islam; which falls squarely into the jurisdiction of the Syariah Court. Therefore, it follows that no matter how the Syariah Courts have decided on the applicant's application, the civil courts will have no jurisdiction to determine and decide on the applicant's application to renounce Islam.

[71] The Syariah Courts have also decided to dismiss the applicant's application. It is reiterated that the civil courts have no jurisdiction over Syariah matters. Therefore, in what capacity do the civil courts have to review the decision of the Syariah Courts when the crux of the matter, ie renunciation of Islam lies within the jurisdiction of the Syariah Courts.

[72] To me, it does matter what the decision was, but the most important issue is that the civil courts have no jurisdiction to hear matters within the jurisdiction of the Syariah Courts, nor it has the power to review the Syariah Courts' decision in cases involving the renunciation of Islam.

[73] It must be emphasised here that in *SIS Forum*, the Federal Court decided that JR has two aspects concerned with the validity of legislative and/or executive action to the extent that they are in excess of constitutional limits which is called Constitutional JR.

[74] The other is a statutory JR which is concerned with all forms of JR that is not the former, and therefore covers a wide spectrum of actions including the decisions of inferior tribunals and whether any subsidiary legislation is ultra vires parent stature.

[75] It is the applicant's submission that the respondents had acted ultra vires against the Federal Constitution and therefore fall under both Constitutional and Statutory JR. It is argued that it falls under Constitutional JR because the applicant seeks to invalidate legislative provisions and executive orders on the basis that they are unconstitutional as it is contrary to art 11 of the FC and she was denied her right to profess the religion of her choice. It is also argued that she was compelled to attend the counseling for *akidah* rehabilitation process which is violative of art 5 and/or art 8 and/or art 11 and/or art 12(3) of the FC.

[76] It has also been argued that the applicant's case falls under statutory JR because the respondents' orders were made illegally and/or unlawful and were violative of the doctrine of procedural fairness, were irrational and/or

unreasonable and were disproportionate and the applicant is seeking declarations, certiorari and mandamus against the respondents. Citing the cases of *SIS Forum* and *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145; [2018] 2 MLRA 1, that the only the civil courts have power for JR, the applicant is seeking for the decision of the Syariah Courts be reviewed.

[77] It is not disputed that if the relief sought by a plaintiff is like the 'inherent powers' of the civil court (for example JR) or it involves constitutional issues or interpretation of the law, the civil courts would be seised with jurisdiction to determine the issue, regardless of its subject matter.

[78] However, it is clear from this case that the relief sought by the plaintiff (applicant in this case) was to renounce Islam. Renunciation of Islam is clearly a Syariah matter in which the jurisdiction lies within the Syariah Court. It must also be emphasised here that the JR sought in this case is to review the Syariah Court's decisions earlier that dismissed the plaintiff's/applicant application to renounce Islam.

[79] Therefore, it appears that the Syariah Courts have done nothing wrong in deciding the applicant's application. It was not an application for JR that the Syariah Courts have no jurisdiction to hear. But, the application is now before the civil courts to review the decision of the Syariah Courts. Clearly, it is not the jurisdiction of the civil courts to hear and determine the application to renounce Islam. And what power does the civil court has to review the decision of the Syariah Courts in which it has no jurisdiction to hear in the first place.

[80] I am of the considered view that the arguments by the applicant's counsel are of no merit. Firstly, it is clear that the Syariah Courts have done nothing wrong in determining and deciding on the applicant's case since it is their jurisdiction to do so. The Syariah Courts have not acted ultra vires when they made the order nor the orders were illegal and unlawful.

[81] The Syariah Courts have the power to hear the plaintiff's/applicant's case under s 46(2)(b)(x) of the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) which provides:

> (2) A Syariah High Court shall —
>
> ...
>
> (b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to —
>
> ...
>
> (x) other matters in respect of which jurisdiction is conferred by any written law.

[82] The above cited cases such as *Lina Joy* have shown that the jurisdiction to hear such application lies within the jurisdiction of the Syariah Courts. A

[83] Secondly, as stated above, the civil courts cannot and has no jurisdiction to review decisions from the Syariah Courts. Even though the power for JR lies within the civil courts, but in this case, the applicant's application is to review the Syariah Court's decision in her application for renunciation. Unlike *Indira Gandhi* which involves unilateral conversion, this application has no place in the civil court's jurisdiction. B

[84] The Federal Court in *Indira Gandhi* held that the power of JR is vested exclusively in the civil courts. The Syariah Courts are not superior courts in accordance with the constitutional provisions in Part IX of the Constitution. Syariah Courts must confine themselves to persons and subject matters listed in the State List and their jurisdiction is not inherent and must be conferred expressly by state legislation. C D

[85] The Federal Court also decided that despite the conversion of one parent to Islam, both parents have equal rights to custody and upbringing of the infants and the best interest of the child must be the priority. Again, it must be emphasised that there was never a JR application before the Syariah Court in this case, and the Syariah Court has acted within its jurisdiction as expressly conferred by the state legislation. E

[86] But, the crux of the matter now is the application by the applicant for JR against the decision of the Syariah Courts which have dismissed her application to renounce Islam. The question now is; what power do the civil courts have to review a decision of the Syariah Courts which its original jurisdiction to determine the case (renunciation of Islam) is within the Syariah Courts? The answer is none, the civil courts have no power to review the decisions of the Syariah Courts in cases where the Syariah Courts are possessed with the jurisdiction to hear the case. The applicant's argument is therefore baseless and without merit. F G

CONCLUSION H

[87] Bearing in mind that this is an application for leave to commence JR proceedings under O 53 of the ROC 2012, it is trite that the test for leave to commence with JR be complied with. I

[88] Having considered the application, I am of the opinion that the subject matter of this application is not amenable to JR. the applicant has failed to show that the decision made by the Syariah Courts was a result of illegality,

A unreasonableness or irrationality and procedural impropriety. It is reiterated that the Syariah Courts have acted within its powers to hear cases within its jurisdiction as provided under art 121(1A) of the FC.

B **[89]** In addition to that, I also reiterate that the applicant has failed to show an arguable case to obtain the order of certiorari and mandamus at the substantive stage. The orders sought by the applicant are frivolous in nature.

C **[90]** All in all, it is my considered view that the applicant has failed to cross the hurdle of the JR test. As discussed above, the subject matter in this case has been settled by law. It is clear that there is no arguable case for the applicant. Therefore, this application for leave is frivolous and is not amenable to JR.

D **[91]** Thus, this application for leave to commence JR proceedings (encl 1) is dismissed with costs of RM2,000 without the allocator fee.

Application dismissed.

Reported by K Selvaraju

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